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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No. 10-90, WT Docket No. 10-208; FCC 18-183]

Connect America Fund; Universal Service Reform – Mobility Fund

AGENCY: Federal Communications Commission.

ACTION: Final action.

SUMMARY: In this document, the Commission extends the timeframe for the collection of speed test data for Mobility Fund Phase II (MF-II) challenges and for the collection of data by respondents to MF-II challenges by 90 days. Speed test data in support of a challenge will be accepted if collected on or after February 27, 2018, and through November 26, 2018.

Respondents may submit information that was collected any time on or after April 29, 2018, through the close of the response window.

DATES: The Order is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Office of Economics and Analytics, Auctions Division, Audra Hale-Maddox, at (202) 418-0660.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Third Report and Order in WC Docket No. 10-90 and WT Docket No. 10-208; FCC 18-183, adopted on December 13, 2018, and released on January 03, 2019. The complete text of this document is available for public inspection and copying from 8 a.m. to 4:30 p.m. Eastern Time (ET) Monday through Thursday or from 8 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street S.W., Room CY-A257, Washington, DC 20554. The complete text is also

available on the Commission's website at <http://wireless.fcc.gov>, or by using the search function on the EDOCS web page at <https://www.fcc.gov/edocs>. Alternative formats are available to persons with disabilities by sending an e-mail to fcc504@fcc.gov or by calling the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

Regulatory Flexibility Analysis: As required by the Regulatory Flexibility Act of 1980, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) of the possible significant economic impact on small entities of the policies and rules adopted in this document. The FRFA is set forth in the Third Report and Order and is summarized below. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this Third Report and Order, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

Paperwork Reduction Act: This Third Report and Order implements the information collection requirements adopted in the *MF-II Challenge Process Order*, 82 FR 42473, September 8, 2017, (PRA approval published 83 FR 6562 (Feb. 14, 2018)), and does not contain any additional information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. On February 7, 2018, the Commission received PRA approval from the Office of Management and Budget (OMB) for the information collection requirements related to the challenge process, as adopted in the *MF-II Challenge Process Order*. Because this Third Report and Order does not adopt any additional information collection requirements beyond those adopted in the *MF-II Challenge Process Order* and approved by OMB, it does not implicate the procedural requirements of the PRA or the Small Business Paperwork Relief Act of 2002, Public Law 107-198.

Congressional Review Act: The Commission will send a copy of this Third Report and Order

to Congress and the Government Accountability Office pursuant to the Congressional Review Act.

SYNOPSIS: On December 13, 2018, the Commission adopted a Third Report and Order in WC Docket No. 10-90 and WT Docket No. 10-208 extending the data collection periods for MF-II challenges and responses by 90 days. Previously, the Commission extended the deadline for the close of the Mobility Fund Phase II challenge window by 90 days. Challengers had until November 26, 2018, to submit speed test data in support of a challenge. At the time that the Commission extended the challenge window, it also proposed to extend by 90 days the periods during which challengers and respondents could collect data.

I. BACKGROUND

1. In 2017, the Commission adopted rules to move forward on a reverse auction that will direct up to \$4.53 billion of MF-II support over ten years to providers in geographic areas lacking unsubsidized 4G Long Term Evolution (LTE) services. The Commission also determined that it would establish standards for mobile providers to make a one-time submission of current 4G LTE coverage data, compile a list of areas that were presumptively eligible for MF-II support, and provide a timeframe before the auction during which interested parties could challenge areas that were not listed as presumptively eligible (i.e., “presumptively ineligible” areas). Mobile providers had to file their coverage data with certifications by a qualified engineer, under penalty of perjury. The Rural Broadband Auctions Task Force, in conjunction with the Wireless Telecommunications Bureau and the Wireline Competition Bureau, compiled the one-time collection of 4G LTE coverage data and subsidy data from the Universal Service Administrative Company (USAC) to create the resulting map of areas presumptively eligible for MF-II support.

2. The *MF-II Challenge Process Order* established the framework for a robust challenge process that will refine the map of areas presumptively eligible to receive MF-II support. This challenge process is designed to efficiently resolve disputes about the eligibility of presumptively ineligible areas using mobile network speed test data. During the challenge window, interested parties could contest the initial determination of areas deemed presumptively ineligible for MF-II support. An eligible challenger could access USAC's web data portal and download the provider-specific confidential coverage data necessary to begin conducting speed tests to challenge assertions of coverage. After the close of the challenge window, a respondent would have the opportunity to respond to challenges by submitting its own speed test data or certain technical information that is probative of the validity of the challenger's speed tests. Challenged parties will have 30 days to review challenges and supporting data in the USAC portal before the opening of the response window. Once opened, the response window will close 30 days later.

3. The Commission initially established a challenge window of 150 days, which began on March 29, 2018, and it was scheduled to close on August 27, 2018. After the Commission adopted the timeframe for the challenge window, the Rural Wireless Association (RWA) submitted *ex parte* data regarding estimated burdens of the challenge process, including specific estimates of the amount of time required to conduct speed tests in certain areas. Taking this *ex parte* burden data into account, the Commission extended the challenge window in its August 2018 *MF-II Challenge Process Extension Order*, 83 FR 44241, August 30, 2018, for an additional 90 days, to November 26, 2018.

4. Under the standards adopted in the *MF-II Challenge Process Order*, speed test data for a challenge would only be accepted if such data were collected within the six months

preceding the scheduled close of the challenge window. The Commission adopted the six-month collection period for speed test data because ongoing deployment of new 4G LTE service raised concerns “that speed measurements taken before the submission of updated coverage maps may not reflect the current consumer experience.” That six-month period commenced on February 27, 2018, upon the publication of the map of presumptively eligible areas. Similarly, the standard for data to be submitted by a respondent required that such data be collected within six months before the close of the response window.

5. When extending the challenge window in the *MF-II Challenge Process Extension Order*, the Commission proposed in the MF-II Challenge Process Extension Notice of Proposed Rulemaking, 83 FR 44254, August 30, 2018, to extend the periods during which both challengers and challenged parties could collect information from six months to at least nine months. The Commission offered these proposals in recognition that challengers could have already collected speed test data before the challenge window was extended, in which case data collected between February 27, 2018, and May 28, 2018, would not be acceptable absent an expansion of the initially adopted six-month data collection period. The Commission tentatively concluded that this modification to the data timeframe requirements would serve the public interest by preventing challengers from having to repeat speed tests and would more effectively implement MF-II policy. Three parties submitted comments in response to the Notice of Proposed Rulemaking (NPRM). No commenters opposed the proposed modification to the data timeframe requirements.

II. ORDER EXTENDING THE CHALLENGE DATA COLLECTION WINDOW

6. The Commission adopts the proposal to accept speed test data for MF-II challenges collected on or after February 27, 2018, through the new close of the challenge

window, November 26, 2018. All commenters support the proposal. RWA stated that some of its member companies spent significant amounts of money performing testing before May 28 and that those expenses would be wasted if the timeframe for acceptable testing were not also extended. U.S. Cellular and Competitive Carriers Association (CCA) agreed with the Commission's stated rationale that extending the timeframe would avoid unnecessary retesting while collecting accurate data. To relieve challengers of the needless repetition of speed tests conducted before May 28 and to more effectively implement the MF-II challenge process, the Commission modifies the initially adopted requirement that challenger speed test data be collected within six months before the scheduled close of the challenge window. This modification allows challengers to submit the results of speed tests taken during the entire nine-month challenge process data collection window. When setting the original challenge process data collection window, the Commission stated that it was concerned that challenge data collected before deployments made in conjunction with the submission of updated coverage maps from current providers might not reflect the current consumer experience. The Commission therefore required that challenge data be collected after the publication of the initial eligibility map and within six months of the scheduled close of the challenge window (which at the time were exactly contiguous periods). But given the Commission's extension of the challenge window by three months, extending the data collection period by a similar period does not permit submission of data collected prior to the submission of the updated coverage maps.

7. Likewise, the Commission adopts the proposal to afford respondents the same additional amount of time as challengers to collect information for the MF-II challenge process. Hence, during the response window, respondents may submit information that was collected any time on or after April 29, 2018, through the close of the response window. This change is

consistent with the *MF-II Challenge Process Order*'s generally parallel standards for challengers and respondents. CCA supports an extension to provide respondents with a similar timing requirement as challengers. As CCA observes, providing respondents with a similar data collection time period appropriately balances the interests of respondents with the Commission's interest in receiving data collected recently. As stated above for challengers, this extension of the data collection period for respondents would not permit submission of any data collected before the publication of the presumptively eligible areas map, and therefore the permitted data would not create data recency concerns. Accordingly, a respondent would have at least nine months to collect speed test data for its own network or certain technical information probative of the validity of the challenger's speed tests. Respondents' speed tests collected on or after April 29, 2018, will be considered valid.

III. PROCEDURAL MATTERS

A. Paperwork Reduction Act Analysis

8. The Third Report and Order implements the information collection requirements adopted in the *MF-II Challenge Process Order* and does not contain any additional information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. On February 7, 2018, the Commission received PRA approval from the Office of Management and Budget (OMB) for the information collection requirements related to the challenge process, as adopted in the *MF-II Challenge Process Order*. Because this Order does not adopt any additional information collection requirements beyond those adopted in the *MF-II Challenge Process Order* and approved by OMB, this Order does not implicate the procedural requirements of the PRA or the Small Business Paperwork Relief Act of 2002, Public Law 107-198.

B. Congressional Review Act

9. The Commission will send a copy of the Third Report and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act.

C. Final Regulatory Flexibility Certification

10. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for a notice-and-comment rulemaking proceeding, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.” The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

11. As required by the RFA, the Commission prepared Initial Regulatory Flexibility Analyses (IRFAs) in connection with the USF/ ICC Transformation FNPRM, 76 FR 78384, December 16, 2011, the 2014 CAF FNPRM, 79 FR 39195, July 9, 2014, and the MF-II FNPRM, 82 FR 13413, March 13, 2017 (collectively, MF-II FNPRMs). The Commission sought written public comment on the proposals in MF-II FNPRMs including comments on the IRFAs and Supplemental IRFA. The Commission included Final Regulatory Flexibility Analyses (FRFAs) in connection with the CAF Report & Order, 79 FR 39163, July 9, 2014, and Further Notice of Proposed Rulemaking (FNPRM), 79 FR 39196, July 9, 2014, the MF-II Report & Order, 82 FR 15422, March 28, 2017, the *MF-II Challenge Process Order*, and the MF-II Second Order on Reconsideration, 83 FR 17934, April 25, 2018 (collectively, the MF-II Orders).

12. The new requirements adopted in this Order provide additional time for valid data collection for both challengers and respondents. In so doing, this change will align the challenge process data requirements with the procedural rule change, adopted in the *MF-II Challenge Process Extension Order*, extending the challenge window deadline by 90 days. Due to the minor effect of these changes, the Commission anticipates that there will be no significant economic impact on any of the small entities identified in the MF-II FNPRMs and MF-II Orders. Therefore, the Commission certifies that the requirements of the Order will not have a significant economic impact on a substantial number of small entities.

IV. ORDERING CLAUSES

13. Accordingly, IT IS ORDERED that pursuant to the authority contained in sections 1, 4(i) and (j), 254, 303(r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), (j), 254, 303(r), 332, and §§ 1.1 and 1.425 of the Commission's rules, 47 CFR 1.1, 1.425, this Order IS ADOPTED.

14. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 1, 4(i) and (j), 254, 303(r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), (j), 254, 303(r), 332, and §§ 1.1 and 1.425 of the Commission's rules, 47 CFR 1.1, 1.425, the windows for challengers and respondents to collect information in connection with the MF-II challenge process ARE EXTENDED, to the extent described herein.

15. IT IS FURTHER ORDERED that, pursuant to § 1.427(b) of the Commission's rules, 47 CFR 1.427(b), this Order SHALL BE EFFECTIVE upon its publication in the **Federal Register**.

16. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this

Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA.

FEDERAL COMMUNICATIONS COMMISSION

Marlene Dortch,
Secretary.

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